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REMARKS

Claims 1-57 and 65-78 are pending in this Application. By the present amendment, Claims 18-28, 37-42 and 50-57 are cancelled, without prejudice. Claims 29, 65, and 71 are amended herein. As a result, Claims 1-17, 29-36, 43-49, and 65-78 are at issue in the Application after entry of the amendment.

35 U.S.C. §112

Examiner has rejected claims 29 and 65-78 under 35 U.S.C. § 112, as indefinite. Examiner invited amendment to resolve the indefiniteness rejections.

Applicants have amended claims independent Claims 29, 65, and 71 to resolve the rejections. During the December 5th telephonic interview, Examiner indicated that such amendments likely would be entered and resolve the rejections. Applicants thereby request that Examiner withdraw the rejections.

In the Final Office Action, Examiner stated that Claim 71 (and the dependents therefrom) have not been examined on the merits. Even though Applicants amended independent Claim 71 to resolve the Section 112 issues, Examiner did not provide any comments regarding Claim 71 in the subsequent Advisory Action. Therefore, Applicants request withdrawal of the final rejection of Claim 71, in favor of further prosecution, should it be necessary.

35 U.S.C. §103

Examiner has rejected claims 1-64 under 35 U.S.C. §103 as allegedly unpatentable over Home '973 in view of Home '866. By the present amendment, Applicants have canceled Claims 18-28, 37-42 and 50-57 without prejudice. Claims 58-64 were previously canceled in the Response to the February 21, 2003 Office Action. Thus, Claims 1-17, 29-36, 43-49, and 65-78 are at issue.

As discussed in the telephonic interview, each of the pending claims are patentably distinct over the cited references. Independent Claims 1, 29, 43, 65, and 71 include a common element, namely that the first portion of the projection being **biased into contact with the inner surface of the receiver**. This claim element certainly is not disclosed or suggested by the cited references. As

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a result, independent Claims 1, 29, 43, 65, and 71, and the dependents therefrom, are allowable as explained below.

Specifically, independent Claim 1 recites the structure of:

...the receiver having an inner surface, the projection and the receiver cooperatively dimensioned such that when the projection is received by the receiver, the first portion of the projection is biased into contact with the inner surface of the receiver.

Independent Claim 29 recites the structure of:

...the receiver having an inner surface, the projection and the receiver cooperatively dimensioned such that when the projection is received by the receiver, the first portion of the projection is biased into contact with the inner surface of the receiver.

Independent Claim 43 recites the structure of:

...the projection and the receiver cooperatively dimensioned such that when the projection is received by the receiver, the first portion of the projection is biased into contact with the inner surface of the receiver.

Independent Claim 65 recites the structure of:

...wherein the projection is positioned within both the upper frame member and the lower frame member, and wherein a first portion of the projection is biased into contact with an inner surface of the receiver.

Independent Claim 71 recites the structure of:

...means for biasing a free portion of the projection into contact with an inner surface of the receiver.

The cancellation of Claims 18-28, 37-42 and 50-57 renders moot Examiner's inclusion of U.S. Patent No. 5,623,866 to Home in the rejections, since Home '866 lacks any biasing and Examiner apparently recognizes such.

Regarding Home '973, Examiner has construed the upper post 31 as the receiver, the lower post 32 as the projection, and the leaf spring 4 as the biasing means. With this construction, Examiner asserts that leaf spring 4 has the ability to distort the tubing wall of the lower post 32 into contact with the inner surface of the upper post 31. As discussed during the telephonic interview,

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Applicants request reconsideration of this interpretation of Home '973. Since, such interpretation is entirely contrary to the disclosure and teaching of Home '973.

Home '973 does not disclose or suggest at least one significant element of the pending claims -- the projection being **biased into contact with the inner surface of the receiver**. Instead, Home '973 discloses a very different structure, and teaches away from the present invention and Examiner's interpretation of Home '973. Home '973 discloses a cart assembly or trolley 1 with four legs 3, wherein each leg 3 has an upper post 31 that slidingly receives a lower post 32. (Col. 2, Ins. 40-43). As shown in Fig. 3 (below), a leaf spring 4 is located in the lower post 32 and has a protrusion 41 that extends through holes 310, 320 to keep the upper and lower posts 31, 32 from separating.

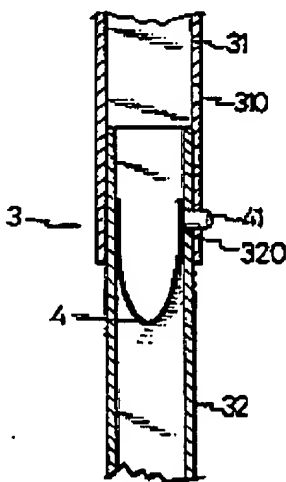


FIG. 3

In addition, Home '973 teaches away from Examiner's construction. Instead of biasing the lower post 32 into contact with the upper post 31, Home '973 expressly discloses that the height of the trolley 1 may be altered by retracting the protrusion 41 from the holes 310, 320 and sliding the upper post 31 along the lower post 32. (Col.2, Ins. 45-52). Thus, the lower post 32 is configured for

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sliding movement within the upper post 31, not biasing into contact with the upper post 31. Therefore Examiner's construction is contrary to the very teaching of Home '973, and the rejections should be withdrawn and the claims allowed. Applicants respectfully request notification accordingly.

The withdrawal of the rejection and the allowance of the pending claims is further supported by the Declaration of Adrian A. Bruno, a co-inventor and person skilled in the art. Mr. Bruno reviewed Home '973 and determined that the lower post 32 is not biased into contact with the inner surface of the upper post 31. (Bruno Declaration, para. 7). Also, Mr. Bruno explains that the upper and lower posts 31, 32 are tubular support members that clearly are not configured for biasing against one another. (Bruno Declaration, para. 7). Furthermore, Mr. Bruno states that one of ordinary skill in the art of barbecue grill cart design would not interpret Home '973 in the manner done so by Examiner. That is, Home '973 does not describe or suggest the biasing of the lower post 32 into contact with the inner surface of the upper post 31. (Bruno Declaration, para. 8). This is conclusive evidence that Examiner's interpretation of Home '973 is incorrect and that the rejections must be withdrawn. As a result, Claims 1-17, 29-36, 43-49, and 65-78 are allowable over the cited art, and Applicants request notification of such allowance.

Further, dependent claim 13 expressly recites the preferred embodiment of a threaded fastener to bias the projection into engagement with the inner surface of the receiver. Home '973 does not disclose or suggest a threaded fastener. Using the disclosure of the present invention, Examiner has applied hindsight reconstruction to assert that the use of a threaded fastener is an obvious adaptation of Home '973. This reconstruction still does not result in the claimed structure, and such combination is derived by hindsight and thereby improper. For this reason and the reasons presented above, dependent Claim 13 is allowable.

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CONCLUSION

In view of the foregoing, Applicants believe the Application is in a condition for allowance, and respectfully request early notice of the same. Applicants request that the Examiner call the undersigned attorney if the Examiner has any questions concerning this Response, or if it will expedite the progress of this Application.

Respectfully submitted,

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By:

Bradley F. Rademaker

Bradley F. Rademaker, Reg. No. 35,331

Peter M. Siavelis, Reg. No. 51,136

Wallenstein Wagner & Rockey, Ltd.

311 S. Wacker Drive, 53rd Floor

Chicago, Illinois 60606-6630

312.554.3300

Attorneys for Applicants

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document is being facsimile transmitted to the Patent and Trademark Office, to the attention of Examiner Josiah Cocks, Art Unit No. 3749, on December 9, 2003, to Fax No. 703/872-9306.

Peter M. Siavelis
Peter M. Siavelis/189289.1